

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.976 OF 2006
IN

CRIMINAL APPEAL NO.114 OF 2004

Jayram Laxman Baswant ..Applicant

Versus

The State of Maharashtra ..Respondent

Mr.A.G.Toraskar (Advocate appointed from Legal Aid Panel) for the applicant.

Smt.P.H.Kantharia APP for the State.

**Coram : J.N.Patel &
R.S.Mohite, JJ**

Date : 24.01.2007.

PC

1. Heard.

2. This is an application filed for suspension of sentence by the appellant/original accused who has been convicted by the Ist Adhoc Additional Sessions Judge, Palghar, by judgment and order dated 28.5.2003 in Sessions Case No.121/2002 for having committed murder of Ladkya and is sentenced to suffer imprisonment of life and to pay a fine of Rs.5000/- which was directed to be paid to the widow of deceased by way of compensation.

3. It is the case of the prosecution that the original accused no.2 Damu is the real brother of

deceased Ladkya and the accused no.1 Jayram is the brother of the wife of accused no.2 Damu. The deceased Ladkya applied to Tahasildar, Palghar for bullockcart under the government scheme. In his absence, accused no.2 Damu obtained the bullockcart by making necessary payments. When the deceased returned from his work, took over the bullockcart from accused no.2 by paying the money which was paid by accused no.2 on his behalf. It is the case of the prosecution that subsequently accused no.2 demanded the bullockcart for his personal work but as it was refused, accused no.2 out of sudden provocation broken that cart with an axe. Subsequently on 3.6.2002 there was a quarrel between accused no.2 and deceased Ladkya over the dispute of bullockcart in which accused assaulted the wife of the deceased by name Yashodabai and daughter of which report was lodged. It is pursuant to the report which was registered as N.C. against the accused persons, 2 accused came to the house of Complainant Damu on the very day while deceased Ladkya was chitchating there. Accused No.1 dealt a blow of sickle from the backside of deceased Ladkya on his neck and fled away. Due to the injury inflicted by accused no.1 deceased Ladkya died on the spot. Accused no.1 was chased but was successful in escaping. Thereafter the matter was reported to the police through the Police Patil.

4. On being tried, the trial Court found only appellant no.1 guilty of having committed offence under Section 452 and 302 of IPC and original accused no.2 Damu came to be acquitted.

5. The learned Advocate for the appellant submitted that the prosecution has failed to make out a case against the appellant accused who has been convicted as he had no motive or intention to commit murder of the deceased as it was the original accused no.2 Damu who was having strained relations with the deceased over sharing the bullockcart and therefore, even prosecution case is accepted, at the most the case would fall under Section 304 part-II of the IPC as at the relevant time it was due to sudden and grave provocation, quarrel took place in which the victim got killed. Therefore, it is submitted that the case of the appellant could be considered for suspension of sentence as a poor labourer and as good seen society and if released on bail, he will be available to the Court in case his appeal is dismissed.

6. The learned APP objects to allowing of an application for suspension of sentence and grant of bail on the ground that the incident in which deceased Ladkya suffered injuries and died on the spot was witnessed not only by the relatives of the deceased but also by the neighbours and there is no

case made out that the incident was a result of sudden and grave provocation. On the other hand, the 2 accused had come prepared to commit the murder. It is submitted that the trial Court gave benefit of doubt to co-accused Damu as the witnesses did not attribute any role to him in the incident except for accompanying the appellant.

7. Having taken into consideration the evidence of the eye witnesses which stand duly corroborated, prima facie we are of the view that the trial Court was justified in coming to the conclusion that the appellant accused has committed murder. Therefore, we are not inclined to entertain his application for suspension of sentence and the same stands rejected.

(J.N.Patel, J)

(R.S.Mohite, J)